

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SUNRISE EQUITIES CORP.

9 Park Place
Great Neck, NY 11021

Plaintiff,

v.

**BOSTON MARKET CORPORATION f/k/a
GOLDEN RESTAURANT OPERATIONS,
INC.**

14103 Denver West Parkway
Golden, CO 80401

Defendant.

CIVIL ACTION NO. 2:23-CV-3221

COMPLAINT

Plaintiff, Sunrise Equities Corp., (“Sunrise”) by and through its undersigned attorneys, complains against Defendant Boston Market Corporation (“Boston Market”) (each a “Party” and collectively as the “Parties”), and does state and aver as follows:

1. This action is for breach of a certain May 26, 2000 amended and restated lease agreement entered into by and among Sunrise on the one hand as Landlord and Boston Market on the other hand as tenant (the “Current Lease”), concerning the leasehold premises located at 3901 Market Street in Philadelphia (the “Premises”). A true and correct copy of the Lease is attached hereto and incorporated herein as Exhibit 1.

2. The Lease modified in part and reiterated in part the prior lease agreement entered into by Sunrise’s predecessor in interest, Cleethorpes Properties, and Boston Market’s predecessor in interest, Gino’s of Pennsylvania, Inc, on November 1, 1969 (the “Original

Lease”). A true and correct copy of the Original Lease is attached hereto and incorporated herein as Exhibit 2.

3. The Premises are also known to the Parties as Restaurant # 0394.

4. Boston Market has defaulted on its obligations set forth under the Lease, including but not limited to, the payment of rent, despite notice and opportunity to cure said default, and Sunrise has suffered damages in excess of \$75,000, exclusive of interests and costs, in the form of unpaid rent.

The Parties

5. Plaintiff Sunrise is a corporation and citizen of the state of Nevada with its principal business office located at 9 Park Place, Great Neck, New York 11021.

6. Defendant Boston Market is a corporation and citizen of the state of Delaware with its principal business office located at 14103 Denver West Parkway, Golden, Colorado 80401.

7. Prior to January 14, 2000 Boston Market was known as Golden Restaurant Operations Corporation Inc. A true and correct copy of Boston Market’s Certificate of Amendment concerning its corporate name change is incorporated herein and attached hereto as Exhibit 3.

Jurisdiction and Venue

8. The court has jurisdiction over this action pursuant to 28 U.S.C. §1332 because the parties are citizens of different states and the amount in controversy is in excess of \$75,000 exclusive of costs and interest.

9. Venue is proper in this district because the property covered by the Lease is located in this district and the material events surrounding the action all occurred here.

Statement of Facts

10. The Parties executed and effected the Lease on May 26, 2000.

11. According to the Lease Boston Market's initial term of tenancy ran from May 1, 2000 to April 31, 2020 (the "Original Term Expiration Date"). *See* Exhibit 1 at Para. 3(a).

12. Pursuant to Paragraph 3(d) of the Lease Boston Market, provided it was not in default and delivered the requisite notice, had the option of extending the Original Term up to seven consecutive times for a period of 5 years each.

13. On October 28, 2019, six months in advance of the expiration of the Original Term, Boston Market delivered notice of its decision to exercise its option under Paragraph 3(d) to extend the term of the lease for an additional 5 years. (the "First Extended Term") A true and correct copy of the option notice is attached hereto and incorporated herein as Exhibit 4; *see also* Exhibit 1 at Exhibit C.

14. The Basic Rent due for the First Extended Term was agreed as \$102,487 per year; or, \$8,540.58 per month.

15. The First Extended Term would thereafter expire on April 30, 2025 unless otherwise additionally extended pursuant to Paragraph 3(d) of the Lease. *See* Exhibits 1 and 4.

16. On February 16, 2023 Sunrise sent a notice of default to Boston Market.

17. By August 8, 2023 Boston Market had failed to make full payment of Rent as required under the Lease and the Original Lease and was in arrears for a total of \$25,941.84. A true and correct copy of unpaid balance of rent for the Premises is attached hereto and incorporate herein as Exhibit 5.

18. Boston Market has thus failed to cure the default despite being given notice and the opportunity to cure its default over the past 6 months.

19. What is more, Boston Market has continued to evade Sunrise's attempt to amicably resolve the default situation.

20. Boston Market's managers, owners, and executives have repeatedly failed to make good on their oral representations that its Rent will become current.

21. Upon information and belief Boston Market has no intention of satisfying its unpaid Rent obligation or of making future Rent payments due under the Lease through the conclusion of the Renewal Term.

22. Paragraph 7(b) of the Original Lease reads in pertinent part:

This Lease shall not terminate, nor shall Lessee [Boston Market] have any right to terminate this Lease (except as otherwise expressly provided in paragraph 13(b) of 15(b), of this Lease, nor shall Lessee be entitled to any abatement or reduction of rent hereunder, nor shall the obligations of Lessee under this Lease be affected by reason of . . . any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding. It is the intention of the parties that the Basic Rent, additional rent and all other sums payable Lessee hereunder shall continue to be payable in all events and that the obligations of Lessee shall continue unaffected unless the requirement to pay or perform the same shall have been terminated pursuant to an express provision of this Lease.

23. The Lease and the Original Lease have not been terminated and thus Boston Market's legal obligation to remain compliant with its terms, including but not limited to the full, timely payment of Rent persists.

24. Sunrise remains fully compliant with and has not breached any of its obligations under the Lease and the Original Lease.

25. Paragraph 19 of the Original Lease explicitly states that failure "to make any payment of Basic Rent or additional rent" which continues for more than three days after receiving notice constitutes and event of default. *See* Exhibit 2.

26. Furthermore, Paragraph 19(f) provides for the full acceleration of rent through the conclusion of the conclusion of the First Extension Term upon the occurrence of an event of default including legal fees and costs associated with any collection efforts undertaken by Sunrise.

27. At present there are 20 months remaining in the First Extension Term.

28. As such, in addition to the \$25,941.84 in unpaid rent currently owed, Sunrise is entitled to liquidated damages in the form of accelerated Basic Rent and additional Rent (as defined in the Lease) in the amount of $\$193,279.02 = ((\text{monthly rent of } \$8,540.58 \times 19 \text{ months}) + (\text{additional rent insurance of } \$220 \times 20 \text{ months}) + (\text{additional rent taxes of } \$1663.20 \times 16 \text{ months}))$.

29. Sunrise is also entitled to additional rent (as defined in the Lease) which will become due and owing through the end of the First Extension Term, fees and costs, and interest & penalty, in an amount to be proven at trial.

30. Despite its failure to pay rent Boston Market continues to occupy the Premises and run its restaurant business therein.

COUNT I

Request for Declaratory Judgment

31. Paragraphs 1-30 above are incorporated by reference as if set forth again here at length.

32. This is an actual controversy within the court's jurisdiction, and under 28 U.S.C. § 2201 the court has the power to and should declare the respective rights of the Parties under the Lease and the Original Lease.

33. As alleged above, Sunrise has suffered damages as a consequence of Boston Market's failure to pay the rent due under the Lease notwithstanding its continued use and enjoyment of the Premises for the purpose of running its restaurant business.

34. Sunrise has fully complied with its obligations under the Lease and the Original Lease.

35. Boston Market has breached its obligations under the Lease and the Original Lease and is thus in default.

WHEREFORE, Plaintiff Sunrise Equities Corp prays for judgment in its favor including an order and decree that Defendant Boston Market Corporation is in default under the Lease and the Original Lease and that Sunrise Equities is entitled to liquidated damages of \$219,220.86

COUNT II
Breach of Contract

36. Paragraphs 1-36 above are incorporated by reference as if set forth again at length here.

37. The Lease and the Original Lease constitute a contract between the Parties.

38. Boston Market has breached that contract by, among other things, failing to make full payment of rent, as more particularly described above.

39. Sunrise has been injured and suffered damages in amount which exceeds the \$75,000 amount in controversy requirement of 28 U.S.C. § 1332, which shall be proven at trial, as a result of Boston Market's breach, for which it is liable.

WHEREFORE, Plaintiff Sunrise Equity Corp prays for judgment in its favor and an award of damages proven at trial, attorney's fees and court costs, and any other relief which the court deems just and proper.

Respectfully submitted,

ROYER COOPER COHEN BRAUNFELD LLC

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